

EMPLOYMENT GUARANTEE ACT

A Primer

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काम का पूरा दाम दो!!

December 2007

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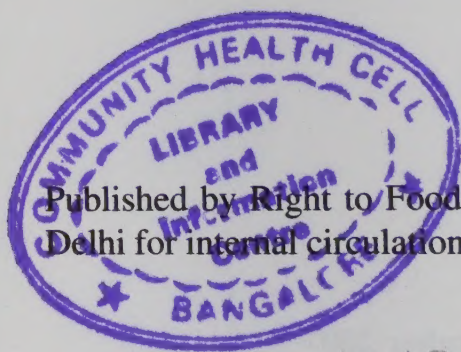
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PREFACE

This Primer introduces you to the National Rural Employment Guarantee Act 2005 (NREGA 2005). It is written in simple language and addressed to a wide audience: labourers, activists, journalists, researchers, and all concerned citizens.

NREGA 2005 is a law whereby anyone who is willing to do unskilled manual labour at the statutory minimum wage is entitled to being employed on public works within 15 days. If employment is not provided, an unemployment allowance has to be paid. However, the work guarantee in NREGA 2005 is subject to an initial limit of “100 days per household per year”.

Workers' organisations have been demanding a national Employment Guarantee Act for many years, along with other legal safeguards for the right to work. The NREGA 2005 was enacted by the Indian Parliament after a long struggle, and much resistance from some quarters (including sections of the corporate sector, the business media, and the Finance Ministry). The Act is by no means perfect. In fact, it is a heavily “diluted” version of an earlier draft, prepared in August 2004 by concerned citizens. Nevertheless, NREGA 2005 is a potential tool of empowerment for rural labourers: guaranteed employment can protect them from economic

insecurity, strengthen their bargaining power, and help them to organise and fight for their rights.

None of this will happen, however, if NREGA 2005 remains on paper, or if it is implemented in a half-hearted manner. The history of every social legislation is that it takes a long struggle for people to enforce their entitlements, even after the law is in place. The success of NREGA 2005 requires a massive process of public mobilisation. In particular, it depends on the strength of organised demand for guaranteed employment.

The first task is to understand the Act, and especially the rights that we have under the Act. The main purpose of this Primer is to facilitate this learning process.

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पहल : एक प्रवेशिका**

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For further information, please send a line to rozgar@gmail.com, check the “employment guarantee” section at www.righttofoodindia.org, or write to the secretariat of the “right to food campaign”, 5 A, Jungi House, Shahpur Jat, New Delhi - 110049. Tel: 011-26499563, Email: righttofood@gmail.com.

Part 1

The National Rural Employment Guarantee Act 2005

The National Rural Employment Guarantee Act 2005 was passed unanimously in the Lok Sabha on 23 August 2005. It came into force in 200 districts on 2 February 2006, and is due to be extended to the whole of rural India within five years.

This section discusses the basic features of the National Rural Employment Guarantee Act 2005 (hereafter NREGA 2005 or “Employment Guarantee Act” for short). The relevant sections of the Act are mentioned in square brackets. Occasional reference is also made to the “Operational Guidelines” issued by the Ministry of Rural Development in January 2006. However, a detailed account of these Guidelines is beyond the scope of this Primer.¹

¹ The full text of the National Rural Employment Guarantee Act 2005 (in English and Hindi) is available at www.righttofoodindia.org. Other key documents, including the “citizens’ draft” mentioned in the Preface and the Operational Guidelines issued in January 2006 by the Ministry of Rural Development, are also available on this website. Detailed information on NREGA 2005 can also be found at www.nrega.nic.in, a special website on NREGA maintained by the Ministry of Rural Development.

A. GENERAL QUESTIONS

1. What is the basic idea of an Employment Guarantee Act?

The idea is to give a legal guarantee of employment to anyone who is willing to do casual manual labour at the statutory minimum wage. Any adult who applies for work under the Act is entitled to being employed on public works without delay. Thus, an Employment Guarantee Act provides a universal and enforceable legal right to the most basic form of employment. It is a step towards legal enforcement of the right to work, as an aspect of the fundamental right to live with dignity.

2. To what extent does the National Rural Employment Guarantee Act 2005 meet these objectives?

NREGA 2005 is a kind of “half-hearted” Employment Guarantee Act. Under this Act, any adult who applies for work is entitled to being employed on public works within 15 days. However, this entitlement is subject to some important limitations. For instance, the work guarantee applies in rural areas only, and it is limited to “100 days per household per year”. NREGA 2005 also has other limitations that will become clearer as you read on.

This does not mean that the NREGA is worthless. Far from it. For the first time, the Act provides employment opportunities to rural labourers as a matter of right. It is also a major departure from elitist economic policies, and a potential stepping stone towards other forms of social security. In this and other ways, the Act is a real “breakthrough”.

3. Why is it important to have an Act, and not just an employment “scheme”?

An Act provides a legal guarantee of employment. This places a judicially enforceable obligation on the state, and gives bargaining power to the labourers. It creates accountability. By contrast, a scheme does not involve any legal entitlements, and leaves labourers at the mercy of government officials. There have been numerous employment schemes in the past: the Employment Assurance Scheme (EAS), National Rural Employment Programme (NREP), Jawahar Rozgar Yojana (JRY), Sampoorna Grameen Rozgar Yojana (SGRY), National Food For Work Programme (NFFWP), among others. Most of them have failed to bring any security in people's lives. Often people are not even aware of them.

There is another important difference between a scheme and an Act. Schemes come and go, but laws are more durable. A scheme can be trimmed or even

cancelled by a bureaucrat, whereas changing a law requires an amendment in Parliament. Under the Employment Guarantee Act, labourers will have durable legal entitlements. Over time, they are likely to become aware of their rights, and to learn how to claim their due.

4. What are the potential benefits of an Employment Guarantee Act?

There are many. To start with, an effective Employment Guarantee Act (EGA) would help to protect rural households from poverty and hunger. One hundred days of guaranteed employment at the minimum wage is not a great privilege, but for those who live on the margin of subsistence, it can make a big difference. Secondly, the Act is likely to lead to a substantial reduction of rural-urban migration: if work is available in the village, many families will stay in place instead of heading for the cities. Thirdly, guaranteed employment can be a major source of empowerment for women. Based on past experience, women are likely to account for a large proportion of labourers employed under the Act, and guaranteed employment will give them some economic independence. Fourthly, the Employment Guarantee Act is an opportunity to create useful assets in rural areas. For instance, there is plenty of scope for building productive water-harvesting structures

through labour-intensive methods. Fifthly, guaranteed employment is likely to change power equations in the rural society, and to foster a more equitable social order.

Last but not least, the Employment Guarantee Act is a means of strengthening the bargaining power of unorganized workers. This, in turn, could help them to struggle for other important entitlements, such as minimum wages and social security. The process of mobilising for effective implementation of the Act also has much value in itself. It is a unique opportunity for “unorganised workers” to organise, which could give a new lease a life to the labour movement in large parts of India.

5. Who is entitled to work under the Employment Guarantee Act?

The work guarantee is a “universal” entitlement - any adult is entitled to apply. The Act is based on the principle of self-selection: anyone who is willing to do unskilled manual labour at the minimum wage is presumed to be in need of public support, and must be provided employment on demand. If anyone tells you that the work guarantee is only for households with a “BPL card”, do not believe it!

6. Is there a limit on the number of days of guaranteed employment over the year?

Yes. As mentioned earlier, the employment guarantee is restricted to "100 days per household per year". Note that "year" here refers to the financial year, which starts on 1 April. In other words, on 1 April each household gets a new "quota" of 100 days for the next twelve months. Note also that the quota of 100 days can be "shared" between adult members of the household: different persons can work on different days, or even on the same day, as long as their combined days of employment do not exceed 100 days in the financial year.

7. Is the Employment Guarantee Act restricted to particular states or districts?

The Act came into force in 200 districts on 2 February 2006. It is supposed to be gradually extended to the whole of rural India (except the state of Jammu and Kashmir) within five years of its enactment, i.e. by mid-2010. This gradual extension requires "notification" of additional districts by the Central Government.

8. What about urban areas?

The National Rural Employment Guarantee Act 2005

applies to rural areas only. Extending the employment guarantee to urban areas would require a separate "Urban Employment Guarantee Act". Meanwhile, the National Rural Employment Guarantee Act itself is likely to be helpful to urban workers, because some of them will be able to stay in their village and get work there instead of migrating to the cities. Also, the reduction of rural-urban migration will lead to higher wages for those who stay in the urban areas.

9. Does the proposed Employment Guarantee Act have any precedent?

The State of Maharashtra passed an Employment Guarantee Act in 1976. It is still in force today. And in some respects, it is stronger than the National Rural Employment Guarantee Act 2005. In particular, Maharashtra's EGA provides an individual and unlimited work guarantee: any adult can apply at any time for any number of days there is no limit such as "100 days per household per year".

B. THE EMPLOYMENT GUARANTEE SCHEME

10. What is the relation between the Employment Guarantee Act and the "Employment Guarantee Scheme"?

The National Rural Employment Guarantee Act 2005 directs every State Government to prepare a Rural Employment Guarantee Scheme (REGS) within six months, in order to implement the work guarantee. Thus, the Act provides the legal foundation of the work guarantee, and the Scheme is the means through which this guarantee comes into effect. Note that the Act is a national legislation, but the Scheme is state-specific. Although each state is free to frame its own Rural Employment Guarantee Scheme, this is subject to certain “basic features” that are spelt out in Schedule I of the Act. For instance, Schedule I specifies the type of works that can be undertaken under REGS, and the minimum facilities that are to be provided at the worksite. Each REGS is also supposed to follow the “Operational Guidelines” issued by the Ministry of Rural Development in January 2006.

11. What kinds of work can be taken up under the Rural Employment Guarantee Scheme?

Schedule I of the Act lists eight categories of works that are supposed to be “the focus of the Scheme”. Briefly, these include (1) “water conservation and water harvesting”; (2) “drought proofing” (including afforestation); (3) “irrigation canals including micro and minor irrigation works”; (4) “provision of irrigation facility” to land owned by households belonging to the Scheduled Castes and Scheduled

Tribes, beneficiaries of land reforms, or beneficiaries of Indira Awas Yojana; (5) “renovation of traditional water bodies” including desilting of tanks; (6) “land development”; (7) “flood control and protection works” including drainage in water logged areas; and (8) “rural connectivity to provide all-weather access”. In addition, there is a residual ninth category: “any other work which may be notified by the Central Government in consultation with the State Government”.

This list is quite restrictive. Short of modifying Schedule I, the only way of expanding the list of permissible works within the framework of the Act is to add further works under the residual category. According to the Operational Guidelines (p. 22), “proposals for new categories of work should be framed by the State Employment Guarantee Council and referred to the Ministry of Rural Development”.

The Act also states that a list of “preferred works”, to be taken up on a priority basis, is to be prepared by the State Employment Guarantee Council. The preferred works are to be identified “based on their ability to create durable assets”, and may differ between different areas.

12. Can works under REGS be taken up in urban areas?

In principle, no. The Act states that “the works taken up under the Scheme shall be in rural areas” [Schedule I, Para 3].

13. Are there any other important restrictions on REGS works?

“New works” can be initiated only if (1) at least fifty labourers become available for such work, and (2) the labourers cannot be absorbed in the ongoing works. However, this restriction can be waived by the State Government “in hilly areas and in respect of afforestation”. [Schedule II, Para 13]

14. Who will be responsible for implementing the Rural Employment Guarantee Scheme?

The Rural Employment Guarantee Scheme will be implemented by the State Government, with funding from the Central Government. According to Section 13, the “principal authorities” for planning and implementation of the Scheme are the Panchayats at the District, Intermediate and village levels. However, the division of responsibilities between different authorities is actually quite complex, as we shall see further on.

The basic unit of implementation is the Block. In each Block, a "Programme Officer" will be in charge. The Programme Officer is supposed to be an officer of rank no less than the Block Development Officer (BDO), paid by the Central Government, and with the implementation of REGS as his or her sole responsibility. The Programme Officer is accountable to the "Intermediate Panchayat" as well as to the District Coordinator. We shall return to this in Section E, after discussing the entitlements of the labourers employed under the Act.

C. WORKERS' ENTITLEMENTS

15. How are labourers expected to apply for work under the Rural Employment Guarantee Scheme?

It is basically a "two-step" procedure. The first step is to "register" with the Gram Panchayat. The second step is to apply for work. Registration is required only once every five years, but applications for work have to be submitted each time work is required.

The main purpose of the registration process is to facilitate advance planning of works. If a household applies for registration, it is the duty of the Gram Panchayat to register it and issue a "job card". The job card will ensure that labourers are in possession

of a written record of the number of days they have worked, wages paid, unemployment allowances received, and so on, instead of depending on government officials for this purpose. A job card is supposed to be valid for five years at least.

Applications for work may be submitted at any time, either through the Gram Panchayat or directly to the Programme Officer. Both have a duty to accept valid applications and to issue a dated receipt to the applicant [Schedule II, Para 10]. Applications must be for at least 14 days of continuous work [Schedule II, Para 7]. The Act provides for group applications, advance applications, and multiple applications over time [Schedule II, Paras 10, 18 and 19]. Applicants are supposed to be told where and when to report for work within 15 days, by means of a letter as well as of a public notice displayed on the notice board of the Gram Panchayat and at the office of the Programme Officer [Schedule II, Paras 11 and 22].

Note that the unit of registration is the “household”, while applications for work are individual applications. Further details of the registration and applications procedures are given in the Operational Guidelines.

16. How is a “household” defined in the Act?

The Act defines a household as “the members of a family related to each other by blood, marriage or adoption and normally residing together and sharing meals or holding a common ration card” [Section 2(f)]. The problem with this definition is that members of a “joint family” who live together and share a ration card may be treated as a single household, even if the household is quite large. This will be unfair to large households, because they will be entitled to the same 100 days of work per year as small households, even if their needs are much larger. Fortunately, the Operational Guidelines clearly state (p. 14) that every nuclear family should be treated as a separate household.

17. How much are labourers supposed to be paid under the Rural Employment Guarantee Scheme?

Labourers are entitled to the statutory minimum wage applicable to agricultural workers in the State, unless the Central Government “overrides” this by notifying a different wage rate. If the Central Government notifies a wage rate, it is subject to a minimum of Rs 60 per day. [Section 6]

18. What will be the mode of payment daily wages or piece rates?

Both are permitted under the Act. In both cases, the minimum wage defined in Section 6 applies. If wages are paid on a piece-rate basis, the schedule of rates has to be such that a person working at a normal pace for seven hours would earn the minimum wage. [Schedule I, Paras 6 to 8]

19. Will wages be paid in cash or in kind?

Wages may be paid in cash or in kind or both. Payment in kind would usually mean part payment in foodgrain. The cash component has to account for at least 25 per cent of the total wage. [Schedule II, Para 31]

20. What about the regularity of wage payments?

Wages are to be paid every week, or in any case "not later than a fortnight after the date on which such work was done" [Section 3(3)]. Further the State Government "may prescribe" that a proportion of the wages in cash should be paid on a daily basis [Schedule II, Para 32].

21. What if wages are not paid on time?

In such cases, labourers are entitled to compensation

as per the provisions of the Payment of Wages Act 1936 [Schedule II, Para 30].

22. Can different wages be paid to men and women?

Certainly not. Men and women are entitled to the same wages. In fact, any form of gender discrimination is prohibited. [Schedule II, Para 34]

23. Are labourers entitled to any specific facilities at the worksite?

Yes. The following facilities are supposed to be available at the worksite: “safe drinking water, shade for children and periods of rest, first-aid box with adequate material for emergency treatment for minor injuries and other health hazards connected with the work” [Schedule II, Para 27]. This is not very much, but even these basic facilities are often missing at the worksites it is important to insist that they should be in place.

24. What about facilities for the care of young children?

The Act states that “in case the number of children below the age of six years accompanying the women working at any site are five or more, provisions shall

be made to depute one of such women workers to look after such children" [Schedule II, Para 28]. Further, the person who is deputed to look after young children is entitled to the same minimum wage as other labourers [Schedule II, Para 28].

25. Where will the work be provided?

"As far as possible", work must be provided within 5 km of the applicant's residence. If it is provided beyond that radius, work must be provided within the Block, and workers must be paid daily transport and living allowances equivalent to 10 per cent of the wage rate. [Schedule II, Paras 12 and 14]

26. Is there any provision in the Act for the employment of persons with disabilities?

No. However, nothing prevents State Governments from including special provisions for disabled persons in their respective Rural Employment Guarantee Schemes. Such provisions might include, for instance: (1) recording of any disabilities at the time of registration; (2) provision of special work opportunities to persons with disabilities; (3) mandatory provision of special employment facilities to households where no-one is able to take up ordinary employment opportunities due to disability or related

reasons (e.g. need to take care of a disabled person); and (4) ear-marking of 3% of the REGS funds for employing persons with disabilities. Note that the last suggestion is based on the Persons with Disabilities Act 1995, which states that “the appropriate Governments and local authorities shall reserve not less than three per cent in all poverty alleviation schemes for the benefit of persons with disabilities.”

27. What happens if there is an accident at an REGS worksite?

If a labourer is injured “by accident arising out of and in the course of his employment” under the Rural Employment Guarantee Scheme, he or she is entitled to “such medical treatment as is admissible under the Scheme”, free of charge. If hospitalisation is required, he or she is entitled to accommodation, treatment, medicines and a daily allowance “not less than half the wage rate”. There are similar provisions for children who may be accompanying labourers employed under the Scheme. In case of death or permanent disability, an ex gratia payment of Rs 25,000 (“or such amount as may be specified by the Central Government”) is to be paid to the victim or his or her family. [Schedule II, Paras 24, 25, 26 and 33]

28. Can labourers exercise any choice regarding the type of work that is given to them?

No. They have to accept whatever employment is given to them by the Gram Panchayat or Programme Officer [Schedule I, Para 10]. At best, they have some indirect say in the matter in so far as they participate in the process of planning the works, through Gram Sabhas and other means (see Section E below).

29. What happens if someone applies for work but does not report for work when employment is provided?

If an applicant fails to report for work within 15 days of being informed that work is available, he or she stands debarred from receiving the unemployment allowance for a period of three months.

D. UNEMPLOYMENT ALLOWANCE

30. Who is entitled to an unemployment allowance under the Employment Guarantee Act?

Anyone who has not been provided with work within 15 days of applying (or within 15 days of the date for which employment is sought, in the case of "advance applications"). [Section 7(1)]

31. In such circumstances, is the State Government obliged to pay the unemployment allowance?

This is certainly the intention. Section 7(1) suggests that labourers who have not been provided with work have an unconditional right to the unemployment allowance. This is qualified in Section 7(2), which states that the payment of the allowance is “subject to such terms and conditions of eligibility as may be prescribed by the State Government and subject to the provisions of this Act and the Schemes and the economic capacity of the State Government”. However, the Operational Guidelines (p. 29) make it clear that the unemployment allowance is an unconditional “entitlement”.² It is important to insist on the payment of the unemployment allowance in all cases where labourers have not been provided with work.

32. What is the role of the unemployment allowance?

The unemployment allowance has several roles. First, it provides a limited form of unemployment assistance

² “If a worker who has applied for work under NREGA is not provided employment within 15 days from the date on which work is requested, an unemployment allowance shall be payable by the State Government at the rate prescribed in the Act. This entitlement comes into effect as soon as the Act is notified in a particular District or area.”

to those who are waiting for work. Second, it provides a clear “signal” that the responsible authorities are failing to provide employment to all applicants. Third, it acts as a “penalty” on the State Government for this failure, since the payment of unemployment allowances is the responsibility of the State Government.

This penalty creates a strong incentive for the State Government to provide work. This is because employment costs are borne overwhelmingly by the Central Government, while the unemployment allowance is paid by the State Government. Therefore, State Governments can “save money” by providing employment instead of paying the allowance. However, for this incentive to work, the unemployment allowance must be actually paid, and not remain “on paper” as has happened in Maharashtra (where the unemployment allowance has never been paid). This is why the actual payment of the unemployment allowance is so important.

33. What is the level of the unemployment allowance?

The unemployment allowance is to be fixed by the State Government. However, it must be “no less than one-fourth of the wage rate” for the first thirty days, and “not less than one-half of the wage rate” after that. [Section 7(2)]

34. What is the time frame for the payment of the unemployment allowance?

The unemployment allowance is to be paid “not later than fifteen days from the date on which it became due for payment” [Section 7(5)].

35. When does someone who is receiving the unemployment allowance cease to be eligible for it?

The payment of the unemployment allowance can be discontinued in the following circumstances: (1) the recipient has been directed to report for work by the Gram Panchayat or the Programme Officer; (2) the period for which employment is sought has come to an end; (3) the recipient's household has exhausted its “quota” of 100 days of work (within the financial year); (4) the household has earned as much as the wages of one hundred days of work, from the unemployment allowance and wage employment combined, within the financial year. [Section 7(3)]

E. IMPLEMENTATION AND MONITORING AUTHORITIES

Note: The National Rural Employment Guarantee Act 2005 is a complex plot with many actors. The main actors are: the State Council, the District Coordinator,

the Programme Officer, the Intermediate Panchayat, the Gram Panchayat and the Gram Sabha, aside from “implementing agencies” other than the Panchayats. There is an elaborate division of responsibilities between these different authorities, and the details are not always clear from the Act. An attempt is made below to present a simplified account of the facts. For further details, please consult the Act and Operational Guidelines.

36. What are the responsibilities of the "Programme Officer" in the Rural Employment Guarantee Scheme?

The Programme Officer essentially acts as a “coordinator” for the Rural Employment Guarantee Scheme at the Block level. Remember, the Block is the basic unit of implementation. Within the Block, two separate processes take place simultaneously. On one side, people are applying for work through the Gram Panchayat, or directly to the Programme Officer in both cases the applications eventually reach his or her office. On the other side, proposals for works to be taken up under REGS (“projects” for short) are being prepared by the “implementing agencies”: the Intermediate Panchayat, the Gram Panchayats, line departments, NGOs, and so on. The Programme Officer stands at the intersection of these two processes: he or she receives the applications for work

as well as the project proposals, and is supposed to “match” the two. This involves sanctioning projects in such a way that all those who have applied for work can be employed within 15 days.

Aside from this “planning” role, the Programme Officer has a “monitoring” role. He or she is supposed to monitor the implementation of the works sanctioned, ensure that wages are paid on time, deal with any complaints that may arise, enforce all the transparency provisions, and so on. The list of responsibilities is quite long and hard to summarise. The main duties of the Programme Officer are listed in Box 1.

Ultimately, the chief responsibility of the Programme Officer is to ensure that anyone who applies for work gets employment within 15 days, or in other words, to safeguard the basic entitlements of labourers under the Act. When this is not possible, he or she has to sanction and disburse the unemployment allowance, and explain in his or her annual report why employment could not be provided. The Programme Officer is accountable to the Intermediate Panchayat and the District Coordinator.

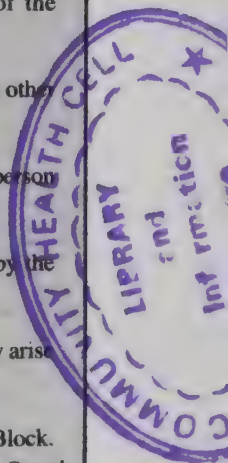
Box 1:

Main Responsibilities of Various Actors at the Block Level

A. Responsibilities of the Block Officer

1. Ensure that every applicant is provided unskilled manual work in accordance with the provisions of the Scheme within fifteen days.
2. Prepare a plan for the Block by consolidating the project proposals prepared by the Gram Panchayats and other implementing agencies.
3. Match the demand for employment with the employment opportunities available in the Block.
4. Receive applications for work and issue a dated receipt to the applicant. (This responsibility is shared with the Gram Panchayat.)
5. Notify applicants to report for work. (This responsibility is also shared with the Gram Panchayat.)
6. Ensure prompt and fair payment of wages to all labourers employed under REGS.
7. Sanction and disburse the unemployment allowance.
8. Sanction projects to be taken up by the Gram Panchayats as well as by other implementing agencies within the jurisdiction of the Programme Officer.
9. Monitor the projects taken up by the Gram Panchayats and other implementing agencies within the Block.
10. Keep a copy of the muster rolls available for inspection "by any person interested".
11. Ensure that regular social audits of all works are carried out by the Gram Sabha.
12. Deal promptly (within seven days) with any complaint that may arise in connection with the implementation of the Scheme.
13. Prepare an annual report on the implementation of REGS in the Block.

Contd...



14. Assist the "Intermediate Panchayat" in discharging its functions under the Act.

15. Any other work that may be assigned to the Programme Officer by the District Programme Coordinator or the State Government.

Note: "All or any" of the functions of the Programme Office can be delegated to the Gram Panchayat by the State Government (see text).

B. Responsibilities of the Intermediate Panchayat

1. Send "proposals" of works to be taken up under REGS to the Programme Officer.
2. Implement projects that have been sanctioned by the Programme Officer.
3. Approve the Block Plan and forward it to the District Panchayat for final approval.
4. Supervise and monitor the projects taken up at the Gram Panchayat and Block level.
5. Any other duties that may be assigned to the Intermediate Panchayat by the State Council.

C. Responsibilities of the Gram Panchayat

1. Prepare a development plan and maintain a shelf of possible works to be taken up under REGS, taking into account the recommendations of the Gram Sabha.
2. Register those who are willing to work under REGS and issue a job card to them.
3. Receive applications for work and issue a dated receipt to the applicant.
4. Allocate work opportunities among the applicants and ask them to

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report for work.

5. Display a list of persons who are being provided with work on its notice board.
6. Implement works that have been sanctioned by the Programme Officer.
7. Make all relevant documents available to the Gram Sabha for the purpose of social audits.
8. Keep a copy of the muster rolls available for public scrutiny at the Panchayat office.
9. Prepare an annual report on the implementation of the Scheme.

D. Responsibilities of the Gram Sabha

1. Recommend "projects" to the Gram Panchayat and make recommendations to the Gram Panchayat for the "development plan" and "shelf of possible works".
2. Monitor the execution of works within the Gram Panchayat.
3. Conduct regular social audits of all the projects taken up within the Gram Panchayat.

37. Can you clarify what is meant by "implementing agencies"?

Implementing agencies include any agency that is "authorized by the Central Government or the State Government to undertake the implementation of any work" taken up under REGS [Section 2(g)]. The main implementing agencies are the Gram Panchayats: at least 50 per cent of the works (in terms of share of the REGS funds) have to be implemented through the

Gram Panchayats [Section 16(5)]. Other implementing agencies include the Intermediate Panchayats, the District Panchayats, and “line departments” such as the Public Works Department, the Forest Department, the Irrigation Department, and so on. The Employment Guarantee Act also allows NGOs to act as implementing agencies.

38. Can private contractors act as implementing agencies?

No. The Act clearly states: “The [Employment Guarantee] Scheme shall not permit engaging any contractor for implementation of the projects under it” [Schedule I, Para 11]. In short, contractors are banned.

39. What is the role of the Gram Panchayat in the Rural Employment Guarantee Scheme?

To start with, the Gram Panchayat has to process applications for “registration” and employment. This involves registering potential workers, issuing job cards to them, receiving their applications for work, forwarding these to the Programme Officer, and informing the applicants as and when work is available. Applications for registration and employment can also be submitted directly to the Programme Officer, but normally they are expected to be submitted at the Gram Panchayat level.

As we saw, the Gram Panchayat is also the main “implementing agency”. It is expected to prepare a “development plan” for the village and maintain a shelf of projects to be taken up under REGS, based on the recommendations of the Gram Sabha. The Gram Panchayat also executes these projects, as and when they are sanctioned by the Programme Officer. All the relevant documents, including the muster rolls, are to be made available to the Gram Sabha for the purpose of “social audits”. Monitoring of REGS works implemented by the Gram Panchayat is the responsibility of the Gram Sabha and the Programme Officer.

40. What is the role of the Gram Sabha in the Rural Employment Guarantee Scheme?

The Gram Sabha is expected to monitor the work of the Gram Panchayat, and also to participate in the planning process. In particular, the Gram Sabha will discuss and prioritise the works to be taken up, conduct regular social audits of all works carried out in the Panchayat, and verify that all the relevant norms are being observed. Resolutions of the Gram Sabha are to be given priority in the planning of REGS works by the Gram Panchayat and the Programme Officer.

41. What happens above the Block level, say at the District and State levels?

At the District level, the supervision of the Rural Employment Guarantee Scheme is the responsibility of the "District Coordinator". The District Coordinator is expected to coordinate the work of the Programme Officers, for instance by consolidating their respective "plans" into a District-level shelf of projects [Section 14(3)(b)]. The District Coordinator is also expected to prepare a "labour budget" every year during the month of December, for the next financial year. Other responsibilities of the District Coordinator include conducting regular inspections of the works in the District, sanctioning works that are not within the jurisdiction of Programme Officers, assisting the District Panchayats, and preparing an annual report to the State Council.

At the State level, the Rural Employment Guarantee Scheme is to be monitored by a State Employment Guarantee Council (or "State Council" for short). The State Council is essentially an advisory body for the State Government. For instance, the State Council is expected to advise the State Government on the "schedule of rates" (payment rates for piece-rate work), the level of the unemployment allowance, and monitoring arrangements. Other key responsibilities of the State Council include preparing a list of

“preferred works” to be taken up on a priority basis, conducting evaluations of REGS, and preparing an annual report to be laid before the State Legislature.

Finally, the Act calls for the creation of a Central Employment Guarantee Council (or “Central Council” for short). The functions of the Central Council are similar to those of the State Council, at the national level. The Central Council monitors the implementation of the Act country-wide, advises the Central Government, and prepares an annual report to be laid before Parliament.

F. TRANSPARENCY AND ACCOUNTABILITY

42. Have any safeguards against corruption been included in the Employment Guarantee Act?

Yes, the Act includes various provisions for transparency and accountability. For instance, job cards are to be issued to all labourers; wages are to be paid “directly to the person concerned and in presence of independent persons of the community on pre-announced dates”; muster rolls and other relevant documents are to be made available for public scrutiny; and so on. Also, regular “social audits” of all REGS works are to be conducted by the Gram Sabhas.

Further transparency provisions have been included in the Operational Guidelines issued by the Ministry of Rural Development in January 2006. Some of these transparency provisions are given in Box 2, but this is only a partial and illustrative list. For further details, see Chapters 10 and 11 of the Operational Guidelines.

Note also that the Employment Guarantee Act goes hand in hand with the Right to Information Act (also enacted in mid-2005). The right to information is an important tool for fighting corruption and is essential for the success of the Employment Guarantee Act. The Operational Guidelines state in no uncertain terms that the Right to Information Act “should be followed both in letter and in spirit in all matters relating to NREGA” (p. 41). Some specific implications of this statement are given in Box 2.

Box 2:
Transparency Provisions in the NREGA Guidelines

The Operational Guidelines (OG) of NREGA, issued by the Ministry of Rural Development in January 2006, include detailed provisions for transparency and accountability. To illustrate, according to the Guidelines:

- The process of registration should be carried out in public, with facilities for people to verify their own details, or those of others (OG, p. 48).
- The list of registered households is to be displayed at the Gram Panchayat office and updated every three months (OG, p. 49).
- The basic entitlements of REGS labourers should be printed at the back of each job card (OG, p. 49).

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- Every work sanctioned under REGS should have a local Vigilance and Monitoring Committee (OG, p. 44).
- Details of work should be displayed on a board at every worksite, in a reader-friendly manner (OG, pp. 51-52).
- Wage payments are to be made in a public place on fixed days (OG, p. 52).
- Social audits of all REGS works are to be held by the Gram Sabhas (OG, p. 46).

The Guidelines also emphasise that the Right to Information Act should be “followed both in letter and in spirit in all matters relating to NREGA” (p. 41). In particular:

- “Requests for copies of REGS-related documents submitted under NREGA should be complied with within seven days. No request should be refused under any circumstances... All NREGA-related information is in the public domain.” (p. 41)
- “Fees charged for copies of NREGA-related documents should not exceed photocopying costs.” (p. 42)
- “Key documents related to NREGA should be proactively disclosed to the public, without waiting for anyone to ‘apply’ for them.” (p. 41)
- “REGS-related accounts of each Gram Panchayat should be proactively displayed and updated twice a year.” (p. 42)
- “Whenever feasible, key documents should be made available on the Internet.” (p. 42)

Chapter 11 of the Guidelines also includes a useful “checklist” of steps required to ensure transparency at various stages of implementation of NREGA.

43. How can the Right to Information Act help to enforce all the transparency provisions of the Employment Guarantee Act and Operational Guidelines?

The Right to Information Act is very strong, and gives legal backing to these transparency provisions. For

instance, the Right to Information Act contains extensive provisions for “mandatory disclosure” of public documents (i.e. making these documents available in convenient form for public scrutiny without waiting for anyone to ask for them). It also calls for stiff penalties against officers who fail to supply information as prescribed, or fail to accept requests for information.

The Right to Information Act empowers you not only to access documents but also to take samples of materials and to inspect works and files. It also has a provision such that if information is wrongfully delayed or denied to a citizen, the concerned public authority can be required “to compensate the complainant for any loss or other detriment suffered”. Further, this Act overrides the provisions of all other acts, if there is a conflict. Thus, the Right to Information Act powerfully supplements the transparency provisions of the NREGA 2005 and its Operational Guidelines. Skilful use of the Right to Information Act is an essential tool of effective implementation of the Employment Guarantee Act.

44. The so-called “anti-corruption clause” in NREGA has caused some controversy. What is this anti-corruption clause?

This clause essentially states that in the event where the Central Government receives any complaint of

“improper utilization of funds” and is “prima facie satisfied” that there is a case, it can “order stoppage of release of funds to the Scheme” [Section 27(2)]. At first glance this may seem reasonable, and the concern about corruption is well taken. However, this clause is actually impractical, unfair, counter-productive and open to misuse. The basic problem is that it hits the victims of corruption instead of the perpetrators. The strongest potential force against corruption is people's vigilance, but this clause threatens to undermine the incentives that people (especially labourers) have to “blow the whistle” in the event of corruption: if funds are discontinued, work will stop and they will be the main victims.

Further, this clause gives the Central Government sweeping powers to stop releasing funds in a selective manner, even without adequate evidence of corruption. Entire “schemes” could be starved of funds based on flimsy suspicions of corruption or politically motivated complaints. Areas could be targeted and specific schemes could get bogged down in battles between Centre and States.

What is required, instead of this flawed clause, is to strengthen transparency measures and enable people to monitor the works. This should also be backed by strong and immediate action against those found guilty of corruption.

G. OTHER QUESTIONS

45. How are costs going to be shared between the Central Government and the State Governments?

The Central Government is required to pay for the wages of labourers employed under REGS, and for three fourths of the material costs. The State Government has to pay for one fourth of the material costs, and also the unemployment allowance. If the labour-material ratio is 60:40 (the "minimum" ratio under the Act), this means that State Governments will pay 10 per cent of the employment costs, plus the unemployment allowance.

Note that the labour component in this cost-sharing formula refers to "unskilled labour" only. The cost of employing skilled labour is counted under "material costs". As far as administrative and overhead costs are concerned (e.g. the salaries of implementing officers), the Act does not provide a rigid formula and the details are likely to be settled when the "Rules" are framed.

46. Shouldn't the Rural Employment Guarantee Scheme be implemented entirely by the Gram Panchayats?

This may be feasible in some states, and over time, the scope for entrusting REGS to the Gram Panchayats is likely to expand. However, in many states there is a long way to go in creating the conditions that would enable Gram Panchayats to implement such a challenging scheme in an effective manner. This is one reason why the Act takes the Block as the basic unit of implementation, rather than the Gram Panchayat. Another reason is that it may be difficult to “match” the demand for work with employment opportunities at the village level: some villages may have a large demand for work and few employment opportunities, or vice-versa. The matching is likely to be easier at the Block level.

However, the Act allows for any of the Programme Officer's responsibilities to be delegated to the Gram Panchayats: “The State Government may, by order, direct that all or any of the functions of a Programme Officer shall be discharged by the Gram Panchayat or a local authority.” [Section 15(7)] Thus, the Act effectively permits implementation through Gram Panchayats if this is deemed possible and desirable.

47. Are women likely to get a fair share of employment under the Rural Employment Guarantee Scheme?

The Act states that “priority” should be given to

women in the allocation of work, “in such a way that at least one-third of the beneficiaries shall be women” [Schedule II, Para 6]. What is not very clear is how this “quota” is to be implemented in the event where the proportion of women among all applicants is less than one third. The best thing to do is to encourage women to apply, and facilitate their applications, to ensure that this situation does not arise. In areas with a strong tradition of women's employment outside the household, it is likely that women will account for more (often much more) than one third of all applicants. In other areas, however, this may require pro-active steps to facilitate their participation in the Rural Employment Guarantee Scheme.

48. What happens if the responsible officers (e.g. the Programme Officer) fail to perform their duty under the Act?

Ideally, there should be explicit penalties against responsible officers in the event where they fail to perform their duty under the Act. And there should be stiff penalties for gross violations of the Act, such as refusal to register someone's application for work, of failure to pay the unemployment allowance. Unfortunately, the Act is quite weak in this respect. All it says is that “whoever contravenes the provisions of this Act shall on conviction be liable to a fine which may extend to one thousand rupees”. Stronger

penalties may of course be introduced in the Rules to be framed by State Governments.

49. Does the National Rural Employment Guarantee Act 2005 leave room for state-specific EGAs also?

Yes. State Governments will be allowed to frame their own Employment Guarantee Act if they wish, provided that (1) it is consistent with NREGA 2005, and (2) it does not reduce the entitlements of labourers (“the entitlement of the households is not less than and the conditions of employment are not inferior to what is guaranteed under this Act”). [Section 28]

Note that in such cases, financial assistance from the Central Government is to be “determined by the Central Government”, and is not supposed to exceed “what the State would have been entitled to receive under this Act had a Scheme made under this Act had to be implemented” [Section 28]. How this upper limit is to be calculated, however, is not very clear from the Act.

50. This Primer often refers to “Schedule I” and “Schedule II” of the Act what are these Schedules?

Schedule I and Schedule II deal with “the minimum

features of a Rural Employment Guarantee Scheme” and “the entitlements of labourers”, respectively. The main difference between the Schedules and the main text of the Act is that the Schedules can be modified by “notification” of the Central Government, whereas modifying the text of the Act requires an amendment in Parliament. “Notification” is a simpler procedure than “amendment” (though both require the consent of Parliament), and to that extent the entitlements defined in the Schedules are “weaker” than those defined in the main text, since they can be modified more easily. There is a potential “loophole” here, which has to be borne in mind in interpreting the Act. On the other hand, the relative flexibility of the Schedules can also be seen as an opportunity to bring about further improvements in the Act through public pressure.

Part 2

What We Can Do

We end this Primer with a few ideas about “what we can do” to intensify the campaign for a full-fledged Employment Guarantee Act. Many of them have already been used with good effect somewhere or the other. We hope that these examples and suggestions will help you to initiate similar activities in your own area.

Awareness Campaigns

- o Spreading awareness about the National Rural Employment Guarantee Act (NREGA) is the first step. This Primer is one possible tool for this purpose.³ Here are a few ways in which it can be used:
 - Read the Primer and organize discussions or workshops around it.
 - Translate the Primer into local languages and disseminate it.

³ Another useful tool is the 30-minutes film “Kaam ka Adhikar”, available from the secretariat of the Right to Food Campaign (see contact details at the end of this booklet).

- Print extracts of the Primer as a “poster” and display it in public places.
- Cultural tools and activities, such as songs and plays, can also be used to spread the word.
- Padyatras, cycle yatras, or even bus yatras can be organised to spread awareness, gather information, and also to agitate for simple transparency measures (such as "suchna patts" or information boards).
- People also need to learn and practice the procedures that are to be followed once the Act is in place. As you know, unlike earlier public works programmes the NREGA is supposed to be "demand-driven": projects are supposed to be initiated in response to people's demand for work. Here are some possible activities related to this process:
 - Organize mass registration programmes at the Gram Panchayat.
 - Raise NREGA-related issues at Gram Sabha and Gram Panchayat meetings.
 - Organize labourers in your area.

- Encourage and help women to apply.
- Prepare proposals for works and present them in the Gram Sabha.
- Once a Rural Employment Guarantee Scheme has been framed in your state, study it carefully. Perhaps you can even prepare a “primer” based on your state's REGS.

Monitoring of works

- The Employment Guarantee Act has already come into force in 200 districts. In these districts, a variety of monitoring activities can be taken up:
 - Get copies of the District's "Perspective Plan" and conduct public hearings around this. The Perspective Plan is supposed to be prepared in a participatory manner, based on wide consultations, but often this is not the way it happens in practice. Studying and debating the Plan is an opportunity to learn about, and to get involved in, the planning process.
 - Organize a survey of NREGA worksites to check whether the provisions of the Act and Operational Guidelines are being followed.

- Monitor works, and use the transparency and accountability provisions of the NREGA and the Right to Information Act to fight corruption. For instance, you could conduct social audits, or just "muster roll verification" exercises, at selected NREGA worksites.
- There is also a continued need for organised pressure on the State Government, relating for instance to the design of an effective "Rural Employment Guarantee Scheme" (REGS), the payment of unemployment allowances, the proactive disclosure of key documents, and so on.

Organising for workers' entitlements

- The best way of making NREGA work is to empower those who stand to gain from it. This means, first and foremost, NREGA workers and potential workers. The process of organising NREGA workers also has much value in itself, and can be used as a springboard for other struggles, e.g. for minimum wages and social security.
- Once NREGA is operational in your area, a whole range of activities can be taken up to organise labourers and help them to claim their entitlements under the Act: insist on payment of statutory

minimum wages, enforce the payment of the unemployment allowance, ensure that basic worksite facilities are in place, demand action in cases of corruption, and so on. Organisations and associations of NREGA labourers can perhaps be formed for this purpose, aside from working with existing organisations.

These are just a few examples of “what we can do”. We leave the rest to your imagination!

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Appendix

National Rural Employment Guarantee Act: A Summary

The National Rural Employment Guarantee Act 2005 is a law whereby any adult who is willing to do unskilled manual work at the minimum wage is entitled to being employed on public works within 15 days of applying. If work is not provided within 15 days, he/she is entitled to an unemployment allowance. The key features of the Act are spelt out below.

Details of the guarantee

- 1. Eligibility:** Any person who is above the age of 18 and resides in rural areas is entitled to apply for work.
- 2. Entitlement:** Any applicant is entitled to work within 15 days, for as many days as he/she has applied, subject to a limit of 100 days per household per year.
- 3. Distance:** Work is to be provided within a radius of 5 kilometres of the applicant's residence if possible, and in any case within the Block. If work is provided beyond 5 kilometres, travel allowances have to be paid.

4. Wages: Workers are entitled to the statutory minimum wage applicable to agricultural labourers in the state, unless and until the Central Government “notifies” a different wage rate. If the Central Government notifies, the wage rate is subject to a minimum of Rs 60/day.

5. Timely payment: Workers are to be paid weekly, or in any case not later than a fortnight. Payment of wages is to be made directly to the person concerned in the presence of independent persons of the community on pre-announced dates.

6. Unemployment allowance: If work is not provided within 15 days, applicants are entitled to an unemployment allowance: one third of the wage rate for the first thirty days, and one half thereafter.

7. Worksite facilities: Labourers are entitled to various facilities at the worksite such as clean drinking water, shade for periods of rest, emergency health care, and child-minding.

EMPLOYMENT GUARANTEE SCHEME

1. Employment Guarantee Scheme: Each state government has to put in place a Rural Employment Guarantee Scheme (REGS) within six months of the Act coming into force.

2. Permissible works: A list of permissible works is given in Schedule I of the Act. These are concerned mainly with water conservation, minor irrigation, land development, rural roads, etc. However, the Schedule also allows “any other work which may be notified by the Central Government in consultation with the State Government”.

3. Programme Officer: The Rural Employment Guarantee Scheme is to be coordinated at the Block level by a “Programme Officer”. However, the Act allows any of his/her responsibilities to be delegated to the Gram Panchayats.

4. Implementing agencies: REGS works are to be executed by “implementing agencies”. These include, first and foremost, the Gram Panchayats (they are supposed to implement half of the REGS works), but implementing agencies may also include other Panchayati Raj Institutions, line departments such as the Public Works Department or Forest Department, and NGOs.

5. Contractors: Private contractors are banned.

6. Decentralised planning: A shelf of projects is to be maintained by the Programme Officer, based on proposals from the implementing agencies. Each Gram Panchayat is also supposed to prepare a shelf

of works based on the recommendations of the Gram Sabha.

7. Transparency and accountability: The Act includes various provisions for transparency and accountability, such as regular social audits by the Gram Sabhas, mandatory disclosure of muster rolls, public accessibility of all REGS documents, regular updating of job cards, etc.

Other Provisions

1. Participation of women: Priority is to be given to women in the allocation of work, "in such a way that at least one-third of the beneficiaries shall be women".

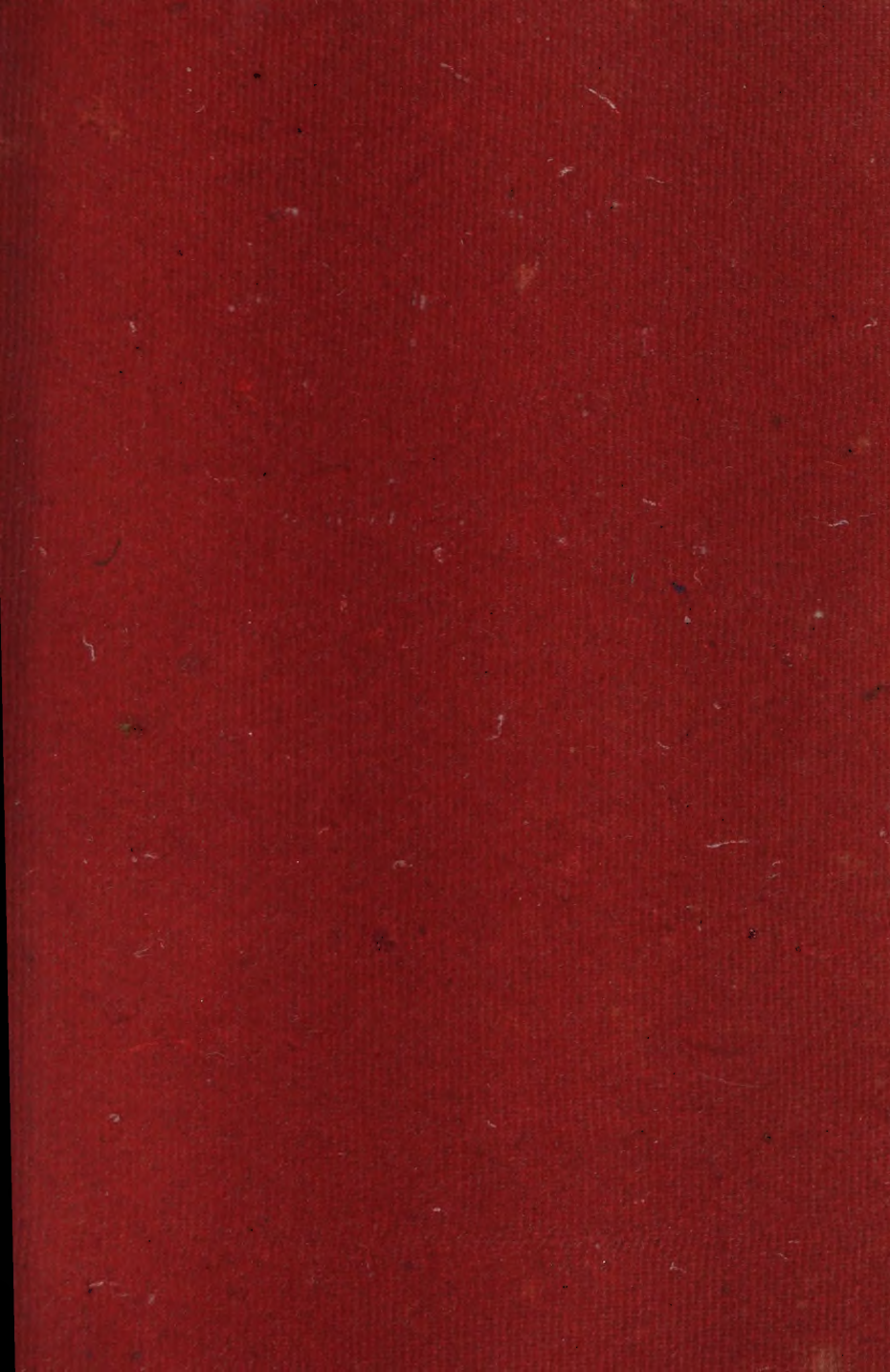
2. Penalties: The Act states that "whoever contravenes the provisions of this Act shall on conviction be liable to a fine which may extend to one thousand rupees".

3. State Council: The implementation of the Act is to be monitored by a "State Employment Guarantee Council".

4. Cost sharing: The Central Government has to pay for labour costs and 75% of the material costs. State governments have to pay the unemployment allowance and 25% of the material costs.

5. Time frame: The Act is to come into force initially in 200 districts, and is to be extended to the whole of rural India within five years of its enactment.

For further information, please send a line to rozgar@gmail.com, check the “employment guarantee” section at www.righttofoodindia.org, or write to the secretariat of the “right to food campaign”, 5 A, Jungi House, Shahpur Jat, New Delhi - 110049. Tel: 011-26499563, Email: righttofood@gmail.com



This Primer is a simple introduction to the National Rural Employment Guarantee Act 2005. This Act is a law whereby any adult who is willing to do unskilled manual labour at the minimum wage is entitled to being employed on public works within fifteen days.